

In The
Supreme Court of the United States

October Term, 1994

CALIFORNIA DEPARTMENT OF CORRECTIONS, et al.,

Petitioners,

v.

JOSE RAMON MORALES,

Respondent.

On Writ Of Certiorari To The
United States Court Of Appeals
For The Ninth Circuit

JOINT APPENDIX

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RELEVANT DOCKET ENTRIES

U.S. District Court, Central District of California

December 26, 1991 - Petition for Habeas Corpus

February 24, 1992 - Return to Petition for Habeas Corpus, containing Exhibit 4, August 22, 1989 Initial Parole Consideration Report and Denial of Parole and Exhibit 6, July 2, 1982 Probation Officer's Report

March 5, 1992 - Traverse

April 17, 1992 - Order re Supplemental Response

May 20, 1992 - Traverse

May 18, 1992 - Report and Recommendations of Magistrate Judge

June 2, 1992 - Petitioner's Limited Written Statement of Objections to Report and Recommendations

June 9, 1992 - Respondents' Objections to Report and Recommendations

August 20, 1992 - Order Adopting in Part and Rejecting in Part the Recommendations of the Magistrate Judge

September 24, 1992 - Order Granting Certificate of Probable Cause

U.S. Court of Appeals for the Ninth Circuit

November 2, 1992 - Appellant's Brief

February 8, 1993 - Appellees' Brief

February 9, 1994 - Opinion of the Court

STATUTE OF 1976

CHAPTER 1139

* * *

[Approved by Governor September 20, 1976. Filed
with Secretary of State September 21, 1976.]

The people of the State of California do enact as follows:

* * *

SEC. 281.8. Section 3041.5 is added to the Penal Code, to read:

3041.5. (a) At all meetings held for the purpose of reviewing a prisoner's parole eligibility, or the setting, postponing or rescinding of parole dates, or evaluating the prisoner's appeal of good-time denial.

(1) The prisoner shall be permitted to review his or her file which will be examined by the Community Release Board at least 10 days prior to any hearing by such board and shall have the opportunity to enter a written response to any material contained in such file.

(2) The prisoner shall be permitted to be present, to ask and answer questions, and to speak on his own behalf.

(3) He shall receive the undivided attention of all the board members who will vote on any decision concerning him.

(4) A person designated by the Department of Corrections shall be present to insure that all facts relevant to the decision be presented, including, if necessary, contradictory assertions as to matters of fact that have not been resolved by departmental or other procedures.

(5) The prisoner shall be permitted to request and receive a stenographic record of all proceedings.

(b) (1) Within 10 days following any meeting where a parole date has been set, the board shall send the prisoner a written statement setting forth his parole date, the conditions he must meet in order to be released on the date set, and the consequences of failure to meet such conditions.

(2) Within 20 days following any meeting where a parole date has not been set for the reasons stated in subdivision (b) of Section 3041, the board shall send the prisoner a written statement setting forth the reason or reasons for refusal to set a parole date; at what time the prisoner can reasonably expect to be considered for the setting of a parole date; and suggest activities in which he might participate that will benefit him while he is incarcerated. The board shall review each such case before the inmate's statutory minimum eligible release date and annually thereafter.

(3) Within 10 days of any board action resulting in the postponement of a previously set parole date, the board shall send the prisoner a written statement setting forth a new date and the reason or reasons for such action and shall offer the prisoner an opportunity for review of such action within 90 days of the time the prisoner receives the statement.

(4) Within 10 days of any board action resulting in the rescinding of a previously set parole date, the board shall send the prisoner a written statement setting forth the reason or reasons for such action, shall offer the prisoner an opportunity for review of such action and

shall, within six months, set the prisoner's parole release date in accord with the provisions of Section 3041 and this section.

* * *

STATUTES OF 1981

* * *

CHAPTER 1111

An act to amend Sections 1170, 1203.01, 3000, and 3041.5 of, and to add Section 3058.5 to, the Penal Code, and to add Section 1180 to the Welfare and Institutions Code, relating to parole.

[Approved by Governor October 1, 1981. Filed with Secretary of State October 2, 1981.]

The people of the State of California do enact as follows:

* * *

SEC. 4. Section 3041.5 of the Penal Code is amended to read:

3041.5. (a) At all hearings for the purpose of reviewing a prisoner's parole suitability, or the setting, postponing or rescinding of parole dates:

(1) At least 10 days prior to any hearing by the Board of Prison Terms, the prisoner shall be permitted to review his or her file which will be examined by the board and shall have the opportunity to enter a written response to any material contained in such file.

(2) The prisoner shall be permitted to be present, to ask and answer questions, and to speak on his own behalf.

(3) Unless legal counsel is required by some other provision of law, a person designated by the Department of Corrections shall be present to insure that all facts relevant to the decision be presented, including, if necessary, contradictory assertions as to matters of fact that

have not been resolved by departmental or other procedures.

(4) The prisoner shall be permitted to request and receive a stenographic record of all proceedings.

(5) If the hearing is for the purpose of postponing or rescinding of parole dates, the prisoner will have rights set forth in paragraphs (3) and (5) of subdivision (a) of Section 2932.

(b) (1) Within 10 days following any meeting where a parole date has been set, the board shall send the prisoner a written statement setting forth his parole date, the conditions he must meet in order to be released on the date set, and the consequences of failure to meet such conditions.

(2) Within 20 days following any meeting where a parole date has not been set for the reasons stated in subdivision (b) of Section 3041, the board shall send the prisoner a written statement setting forth the reason or reasons for refusal to set a parole date; and suggest activities in which he might participate that will benefit him while he is incarcerated.

The board shall hear each case annually thereafter, except the board may schedule the next hearing no later than three years after any hearing at which parole is denied if the prisoner has been convicted, in the same or different proceedings, of more than one offense which involves the taking of a life, and the board finds that it is not reasonable to expect that parole would be granted at a hearing during the following years and states the bases for the finding.

(3) Within 10 days of any board action resulting in the postponement of a previously set parole date, the board shall send the prisoner a written statement setting forth a new date and the reason or reasons for such action and shall offer the prisoner an opportunity for review of such action.

(4) Within 10 days of any board action resulting in the rescinding of a previously set parole date, the board shall send the prisoner a written statement setting forth the reason or reasons for such action and shall, within six months, set the prisoner's parole release date in accord with the provisions of Section 3041 and this section.

* * *

STATUTES OF 1986

CHAPTER 248

* * *

[Approved by Governor July 2, 1986. Filed with
Secretary of State July 2, 1986.]

The people of the State of California do enact as follows:

* * *

SEC. 166. Section 3041.5 of the Penal Code is amended to read:

3041.5. (a) At all hearings for the purpose of reviewing a prisoner's parole suitability, or the setting, postponing or rescinding of parole dates:

(1) At least 10 days prior to any hearing by the Board of Prison Terms, the prisoner shall be permitted to review his or her file which will be examined by the board and shall have the opportunity to enter a written response to any material contained in such file.

(2) The prisoner shall be permitted to be present, to ask and answer questions, and to speak on his own behalf.

(3) Unless legal counsel is required by some other provision of law, a person designated by the Department of Corrections shall be present to insure that all facts relevant to the decision be presented, including, if necessary, contradictory assertions as to matters of fact that have not been resolved by departmental or other procedures.

(4) The prisoner shall be permitted to request and receive a stenographic record of all proceedings.

(5) If the hearing is for the purpose of postponing or rescinding of parole dates, the prisoner will have rights set forth in paragraphs (3) and (4) of subdivision (c) Of Section 2932.

(b) (1) Within 10 days following any meeting where a parole date has been set, the board shall send the prisoner a written statement setting forth his parole date, the conditions he must meet in order to be released on the date set, and the consequences of failure to meet such conditions.

(2) Within 20 days following any meeting where a parole date has not been set for the reasons stated in subdivision (b) of Section 3041, the board shall send the prisoner a written statement setting forth the reason or reasons for refusal to set a parole date; and suggest activities in which he might participate that will benefit him while he is incarcerated.

The board shall hear each case annually thereafter, except the board may schedule the next hearing no later than (A) two years after any hearing at which parole is denied if the board finds that it is not reasonable to expect that parole would be granted at a hearing during the following year and states the bases for the finding or, (B) three years after any hearing at which parole is denied if the prisoner has been convicted, in the same or different proceedings, of more than one offense which involves the taking of a life, and the board finds that it is not reasonable to expect that parole would be granted at a hearing during the following years and states the bases for the finding.

(3) Within 10 days of any board action resulting in the postponement of a previously set parole date, the board shall send the prisoner a written statement setting forth a new ate and the reason or reasons for such action and shall offer the prisoner an opportunity for review of that action.

(4) Within 10 days of any board action resulting in the rescinding of a previously set parole date, the board shall send the prisoner a written statement setting forth the reason or reasons for that action, and shall schedule the prisoner's next hearing within 12 months and in accordance with paragraph (2).

* * *

STATUTES OF 1990

CHAPTER 1053

An act to amend Section 3041.5 of the Penal Code, relating to prisoners.

[Approved by Governor September 18, 1990. Filed with Secretary of State September 19, 1990.]

LEGISLATIVE COUNSEL'S DIGEST

SB 2516, Presley. Prisoners.

Existing law provides for designated procedures at all hearings by the Board of Prison Terms for the purpose of reviewing a prisoner's suitability, or the setting, postponing, or rescinding of parole dates.

Existing law requires that the board hear each case annually except, the board may schedule the next hearing no later than 2 years after any hearing at which parole is denied if the board finds it is not reasonable to expect that parole would be granted at a hearing during the following year and states the basis for the finding, or 3 years after any hearing at which parole is denied if the prisoner has been convicted of more than one offense which involves the taking of a life and the board makes those findings.

This bill would, in addition, permit the board to schedule the next hearing no later than 5 years after any hearing at which parole is denied if the prisoner has been convicted of more than 2 murders and the board makes specified findings.

This bill would also make this provision applicable only to offenses committed before July 1, 1977, or on or after January 1, 1991.

The people of the State of California do enact as follows:

SECTION 1. Section 3041.5 of the Penal Code is amended to read:

3041.5. (a) At all hearings for the purpose of reviewing a prisoner's parole suitability, or the setting, postponing, or rescinding of parole dates, the following shall apply:

(1) At least 10 days prior to any hearing by the Board of Prison Terms, the prisoner shall be permitted to review his or her file which will be examined by the board and shall have the opportunity to enter a written response to any material contained in the file.

(2) The prisoner shall be permitted to be present, to ask and answer questions, and to speak on his or her own behalf.

(3) Unless legal counsel is required by some other provision of law, a person designated by the Department of Corrections shall be present to insure that all facts relevant to the decision be presented, including, if necessary, contradictory assertions as to matters of fact that have not been resolved by departmental or other procedures.

(4) The prisoner shall be permitted to request and receive a stenographic record of all proceedings.

(5) If the hearing is for the purpose of postponing or rescinding of parole dates, the prisoner shall have rights set forth in paragraphs (3) and (4) of subdivision (c) of Section 2932.

(b) (1) Within 10 days following any meeting where a parole date has been set, the board shall send the prisoner a written statement setting forth his or her parole date, the conditions he or she must meet in order to be released on the date set, and the consequences of failure to meet those conditions.

(2) Within 20 days following any meeting where a parole date has not been set for the reasons stated in subdivision (b) of Section 3041, the board shall send the prisoner a written statement setting forth the reason or reasons for refusal to set a parole date, and suggest activities in which he or she might participate that will benefit him or her while he or she is incarcerated.

The board shall hear each case annually thereafter, except the board may schedule the next hearing no later than the following:

(A) Two years after any hearing at which parole is denied if the board finds that it is not reasonable to expect that parole would be granted at a hearing during the following year and states the bases for the finding.

(B) Three years after any hearing at which parole is denied if the prisoner has been convicted, in the same or different proceedings, of more than one offense which involves the taking of a life, and the board finds that it is not reasonable to expect that parole would be granted at

a hearing during the following years and states the basis for the finding.

(C) Five years after any hearing at which parole is denied if the prisoner has been convicted, in the same or different proceedings, of more than two murders, and the board finds that it is not reasonable to expect that parole would be granted at a hearing during the following years and states the bases for the finding in writing. If the board defers a hearing five years, the prisoner's central file shall be reviewed by a deputy commissioner within three years at which time the deputy commissioner may direct that a hearing be held within one year. The prisoner shall be notified in writing of the deputy commissioner's decision.

(3) Within 10 days of any board action resulting in the postponement of a previously set parole date, the board shall send the prisoner a written statement setting forth a new date and the reason or reasons for that action and shall offer the prisoner an opportunity for review of that action.

(4) Within 10 days of any board action resulting in the rescinding of a previously set parole date, the board shall send the prisoner a written statement setting forth the reason or reasons for that action, and shall schedule the prisoner's next hearing within 12 months and in accordance with paragraph (2).

SEC. 2. The amendment to Section 3041.5 of the Penal Code made by this act shall be applicable only to offenses committed before July 1, 1977, or on or after January 1, 1991.

STATUTES OF 1994

CHAPTER 560

An act to amend Section 3041.5 of the Penal Code, relating to parole.

[Approved by Governor September 15, 1994. Filed with Secretary of State September 16, 1994.]

LEGISLATIVE COUNSEL'S DIGEST

SB 826, Leonard. Parole.

Under existing law, if a prisoner is denied parole, the Board of Prison Terms is required to hear the prisoner's case no later than 2 years after the hearing denying parole. If the prisoner has been convicted of more than one offense than involves the taking of a life, the parole hearing must be held no later than 3 years if the prisoner has been convicted of more than 2 murders, as specified.

This bill would instead require that the hearing be held no later than up to 5 years after the hearing denying parole if the prisoner has been convicted of murder.

The people of the State of California do enact as follows:

SECTION 1. Section 3041.5 of the Penal Code is amended to read:

3041.5. (a) At all hearings for the purpose of reviewing a prisoner's parole suitability, or the setting, postponing, or rescinding of parole dates, the following shall apply:

(1) At least 10 days prior to any hearing by the Board of Prison Terms, the prisoner shall be permitted to review his or her file which will be examined by the board and shall have the opportunity to enter a written response to any material contained in the file.

(2) The prisoner shall be permitted to be present, to ask and answer questions, and to speak on his or her own behalf.

(3) Unless legal counsel is required by some other provision of law, a person designated by the Department of Corrections shall be present to insure that all facts relevant to the decision be presented, including, if necessary, contradictory assertions as to matters of fact that have not been resolved by departmental or other procedures.

(4) The prisoner shall be permitted to request and receive a stenographic record of all proceedings.

(5) If the hearing is for the purpose of postponing or rescinding of parole dates, the prisoner shall have rights set forth in paragraphs (3) and (4) of subdivision (c) of Section 2932.

(b) (1) Within 10 days following any meeting where a parole date has been set, the board shall send the prisoner a written statement setting forth his or her parole date, the conditions he or she must meet in order to be released on the date set, and the consequences of failure to meet those conditions.

(2) Within 20 days following any meeting where a parole date has not been set for the reasons stated in subdivision (b) of Section 3041, the board shall send the

prisoner a written statement setting forth the reason or reasons for refusal to set a parole date, and suggest activities in which he or she might participate that will benefit him or her while he or she is incarcerated.

The board shall hear each case annually thereafter, except the board may schedule the next hearing no later than the following:

(A) Two years after any hearing at which parole is denied if the board finds that it is not reasonable to expect that parole would be granted at the hearing during the following year and states the bases for the finding.

(B) Up to five years after any hearing at which parole is denied if the prisoner has been convicted of murder, and the board finds that it is not reasonable to expect that parole would be granted at a hearing during the following years and states the bases for the finding in writing. If the board defers a hearing five years, the prisoner's central file shall be reviewed by a deputy commissioner within three years at which time the deputy commissioner may direct that a hearing be held within one year. The prisoner shall be notified in writing of the deputy commissioner's decision. The board shall adopt procedures that relate to the criteria for setting the hearing between two and five years.

(3) Within 10 days of any board action resulting in the postponement of a previously set parole date, the board shall send the prisoner a written statement setting forth a new date and the reason for reasons for that action and shall offer the prisoner an opportunity for review of that action.

(4) Within 10 days of any board action resulting in the rescinding of a previously set parole date, the board shall send the prisoner a written statement setting forth the reason or reasons for that action, and shall schedule the prisoner's next hearing within 12 months and in accordance with paragraph (2).

15 C.C.R.

§ 2403. Base Term.

(a) General. The panel shall set a base term for each life prisoner who is found suitable for parole. The base term shall be established solely on the gravity of the base crime, taking into account all of the circumstances of that crime. If the prisoner has been received in prison for more than one murder committed on or after November 8, 1978 the base crime is the most serious of the murders considering the facts and circumstances of the crime. If the prisoner has been sentenced to prison for murders committed before November 8, 1978 and for murders committed on or after November 8, 1978 the base offense shall be the most serious of the murders committed on or after November 8, 1978.

The base term shall be established by utilizing the appropriate matrix of base terms provided in this section. The panel shall determine the category most closely related to the circumstances of the crime. The panel shall impose the middle base term reflected in the matrix unless the panel finds circumstances in aggravation or mitigation.

Provided, however in cases of attempted murder, after determining the category as specified, the panel shall impose one-half the middle base term, unless the panel finds circumstances in aggravation or mitigation.

If the panel finds circumstances in aggravation or in mitigation as provided in Sections 2404 or 2405, the panel may impose the upper or lower base term provided in the matrix by stating the specific reasons for imposing such a term. A base term other than the upper, middle or lower

base term provided in the matrix may be imposed by the panel it justified by the particular facts of the individual case and if the facts supporting the term imposed are stated.

(b) Matrix of Base Terms for First Degree on or after November 8, 1978.

CIRCUMSTANCES				
<i>FIRST DEGREE MURDER</i> Penal Code § 189 (in years and does not include post conviction credit as provided in § 2290)	<i>A. Indirect</i> Victim died of causes related to the act of the prisoner but was not directly assaulted by prisoner with deadly force; e.g., shock producing heart attack; a crime partner actually did the killing.	<i>B. Direct or Victim Contribution</i> Death was almost immediate or resulted at least partially from contributing factors from the victim, e.g., victim initiated struggle or had goaded the prisoner. This does not include victims acting in defense of self or property.	<i>C. Severe Trauma</i> Death resulted from severe trauma inflicted with deadly intensity; e.g., beating, clubbing, stabbing, strangulation, suffocation, burning, multiple wounds inflicted with a weapon not resulting in immediate death or actions calculated to induce terror in the victim.	<i>D. Torture</i> Victim was subjected to the prolonged infliction of physical pain through the use of nondeadly force prior to act resulting in death.
VICTIM				
<i>I. Participating Victim</i> Victim was accomplice or otherwise implicated in a criminal act with the prisoner during which or as a result of which the death occurred, e.g., crime partner, drug dealer, etc.	25-26-27	26-27-28	27-28-29	28-29-30
<i>II. Prior Relationship</i> Victim was involved in a personal relationship with prisoner (spouse, family member, friend, etc.) which contributed to the motivation for the act resulting in death. If victim had a personal relationship but prisoner hired and/or paid a person to commit the offense, see Category IV.	26-27-28	27-28-29	28-29-30	29-30-31

III. No Prior Relationship

8

Victim had little or no personal relationship with prisoner, or motivation for act resulting in death was related in the accomplishment of another crime, e.g., death of victim during robbery, rape, or other felony.

27-28-29

28-29-30

29-30-31

30-31-32

IV. Threat to Public Order or Murder for Hire

The act resulting in the victim's death constituted a threat to the public order include [sic] the murder of a police officer, prison guard, public official, fellow patient or prisoner, any killing within an institution, or any killing where the prisoner hired and/or paid another person to commit the offense.

28-29-30

29-30-31

30-31-32

31-32-33

SUGGESTED BASE TERM

(c) Matrix of Base Terms for Second Degree Murder on or after November 8, 1978.

CIRCUMSTANCES

SECOND DEGREE MURDER
Penal Code § 189 (in years and does not include post conviction credit as provided in § 2290)

A. Indirect

Victim died of causes related to the act of the prisoner but was not directly assaulted by prisoner with deadly force; e.g., shock producing heart attack, a crime partner actually did the killing.

B. Direct or Victim Contribution

Death was almost immediate or resulted at least partially from contributing factors from the victim, e.g., victim initiated struggle or had goaded the prisoner. This does not include victims acting in defense of self or property.

C. Severe Trauma

Death resulted from severe trauma inflicted with deadly intensity; e.g., beating, clubbing, stabbing strangulation, suffocation, burning, multiple wounds inflicted with a weapon not resulting in immediate death or actions calculated to induce terror in the victim.

VICTIM*I. Participating Victim*

Victim was accomplice or otherwise implicated in a criminal act with the prisoner during which or as a result of which the death occurred, e.g., crime partner, drug dealer, etc.

15-16-17

16-17-18

17-18-19

II. Prior Relationship

Victim was involved in a personal relationship with prisoner (spouse, family member, friend, etc.) which contributed to the motivation for the act resulting in death. If victim had a personal relationship but prisoner hired and/or paid a person to commit the offense, see Category IV.

16-17-18

17-18-19

18-19-20

III. No Prior Relationship

Victim had little or no personal relationship with prisoner; or motivation for act resulting in death was related to the accomplishment of another crime; e.g., death of victim during robbery, rape, or other felony.

17-18-19

18-19-20

19-20-21

SUGGESTED BASE TERM

§ 2404. Circumstances in Aggravation of the Base Term.

(a) General. The panel may impose the upper base term or another term longer than the middle base term upon a finding of aggravating circumstances. Circumstances in aggravation of the base term included:

(1) The crime involved some factors described in the appropriate matrix in a category higher on either axis than the categories chosen as most closely related to the crime;

(2) The victim was particularly vulnerable;

(3) The prisoner had a special relationship of confidence and trust with the victim, such as that of employee-employer,

(4) The murder was committed to preclude testimony of potential or actual witnesses during a trial or criminal investigation;

(5) The victim was intentionally killed because of his race, color, religion, nationality or country or origin;

(6) During the commission of the crime the prisoner had a clear opportunity to cease but instead continued;

(7) The manner in which the crime was committed created a potential for serious injury to persons other than the victim of the crime;

(8) The murder was wanton and apparently senseless in that it was committed after another crime occurred and served no purpose in completing that crime;

(9) The corpse was abused, mutilated or defiled;

(10) The prisoner went to great lengths to hide the body or to avoid detection;

(11) The murder was committed to prevent discovery of another crime;

(12) The murder was committed by a destructive device or explosives;

(13) There were multiple victims for which the term is not being enhanced under Section 2407;

(14) The prisoner intentionally killed the victim by the administration of poison;

(15) The prisoner intentionally killed the victim by lying in wait;

(16) The prisoner occupied a position of leadership or dominance over other participants in the commission of the crime, or the prisoner induced others to participate in the commission of the crime;

(17) The prisoner has a history of criminal behavior for which the term is not being enhanced under Section 2407;

(18) The prisoner has engaged in other reliably documented criminal conduct which was an integral part of the crime for which the prisoner is currently committed to prison;

(19) The prisoner was on probation or parole or was in custody or had escaped from custody at the time the crime was committed;

(20) Any other circumstances in aggravation including those listed in the Sentencing Rules for the Superior Courts.
